Debt Settlement Arrangement - A Guide

What is a Debt Settlement Arrangement?

A **Debt Settlement Arrangement** is one of three completely new measures contained in The Personal Insolvency Bill 2012 which was passed into law in Ireland at the end of 2012 and which is intended to offer largely non-judicial debt settlement arrangements to debtors with personal debt problems. This guide is intended to provide the layman with a brief summary of the provisions of the **Debt Settlement Arrangement** or **DSA**.

In separate guides we provide summaries of the other two measures contained in the bill, namely **Debt Relief Notice** or **DRN** and **Personal Insolvency Arrangement** or **PIA**.

Before seeking to avail of any of these measures the insolvent debtor should obtain independent legal and/or financial advice from an authorized organisation or a qualified professional such as a local Free Legal Advice Centre (FLAC) the Money Advice and Budgeting Service (MABS), a solicitor, a qualified accountant, a licensed and authorised insolvency practitioner, a debt advice provider, a reputable financial adviser or a debt advice centre.

It is expected that the reliefs provided by these measures will be available to citizens by the second quarter of 2013 when implementation is expected to commence.

Who may avail of a Debt Settlement Arrangement?

A **DSA** allows for the settlement of unsecured debt and is suitable for any insolvent person i.e. any person who is unable to pay their debts as they fall due and who is not eligible to avail of a **DRN**.

Secured debt is not affected and any person entering a **DSA** must be able to service their obligations fully on an ongoing basis in respect of any secured debts they may have. Such a person, the debtor, must be ordinarily domiciled in Ireland or must, within one year of applying for a protective certificate, have been ordinarily resident in Ireland or have ordinarily had a place of business in Ireland.

The debtor must have no likelihood of becoming solvent within the five years following an application for a **DSA** and must not have incurred 25% or more of the relevant unsecured debts in the six months period preceding the date of application for a **DSA**.

There are some other restrictions relating to eligibility for a **DSA** which mainly relate to the debtor not having availed of certain other financial solutions within certain time parameters.

Can creditors refuse to agree to a Debt Settlement Arrangement?

Yes they can. The consent of creditors is required for a **DSA** to be approved. To have a **DSA** approved at least 65% of voting creditors as measured by the debts due to them must accept the **DSA** proposal for it to be approved.

Does a Debt Settlement Arrangement deal with all kinds of debt?

Only unsecured debts are dealt with in a **DSA**. The debtor still has an obligation to service secured debts such as mortgage debt in accordance with the terms and conditions of their secured debt agreements. The debtor is also obliged to pay preferential debts such as rates and income tax.

There are however certain 'excludable debts', largely debts due to the state, which may be included in the **DSA**, provided the creditor (e.g. the state) consents to such inclusion. **DSAs** will deal mainly with debts such as credit card and store card debts, loans, overdrafts and debts relating to utilities.

How much does the debtor in a Debt Settlement Arrangement have to pay to creditors?

That depends on what they can afford to pay and the length of the term of the **DSA**. If the debtor's financial circumstances change for the better during the term of the **DSA**, then he or she will have to increase their payments into the **DSA** accordingly, for the benefit of creditors.

How long will a Debt Settlement Arrangement last?

A **DSA** will normally last five years, the usual period of supervision but there is provision for the term of a **DSA** to be increased for up to a further year. Of course the **DSA** proposal may be for a term shorter than five years and if creditors agree, then that will be the length of the term of supervision. It is important to note that a debtor may only enter into a **DSA** once in their lifetime.

Who regulates the Debt Settlement Arrangement?

The government has established a body called The Insolvency Service one of whose functions is to monitor the operation of the three new debt settlement arrangements including **DSAs**, as provided for in The Personal Insolvency Bill 2012.

Included within the functions of the Insolvency Service is the processing of applications for protective certificates, maintaining Registers for each of the three new debt settlement arrangements and authorizing persons to act as **personal insolvency practitioners** or **PIPs**.

A **PIP** has a pivotal role in the processes relating to DSMs, including advising the debtor before they apply for a **DSA** and supervising the **DSA** if it is approved at the meeting of the debtor's creditors.

How is a Debt Settlement Arrangement applied for?

The insolvent debtor must provide a written statement in relation to his financial affairs to an authorized **PIP**. The **PIP** then meets with the debtor who completes a Prescribed Financial Statement. The **PIP** advises the debtor as to the options open to him in relation to his insolvency and with the debtor's written authorization may assume responsibility for managing the debtor's **DSA** proposal.

The **PIP** then writes making application to The Insolvency Service on the debtor's behalf informing it of the debtor's intention to propose a **DSA** and applying for a protective certificate. The PIP provides a statement confirming the their opinion that the information in the debtor's financial statement is correct, that the debtor satisfies the criteria for a **DSA**, that there is no likelihood that the debtor will become solvent within the next five years and that it is appropriate for the debtor to apply for a **DSA**. A statutory declaration from the debtor also accompanies the application.

How does The Insolvency Service process the Debt Settlement Arrangement application?

The Insolvency Service satisfies itself that the application and accompanying documents are in order and may if they deem it necessary seek further information or documents from the debtor or the **PIP** and may make such further enquiries as it deems fit in its evaluation. If satisfied that the application is in order, The Insolvency Service issues a certificate to that effect and forwards the certificate the application and any supporting documentation to the appropriate court and notifies the **PIP** accordingly.

The court decides whether or not to issue the protective certificate and it may hold a hearing if it requires further information or evidence. Once the protective certificate is issued it lasts for 70 days and it may be extended for a further 40 days in certain circumstances. The court registrar informs The Insolvency Service and the relevant PIP when a protective certificate is issued or extended. The PIP informs the relevant creditors of the debtor's intention to propose a DSA and that a protective certificate has been issued and invites submissions as to how the debts might be settled.

What is the purpose and effect of the protective certificate?

The protective certificate provides a breathing space for the debtor together with the **PIP** to prepare the **DSA** proposal. Certain enforcement proceedings and other actions may not be initiated or progressed in relation to the debts specified therein while the certificate is in force. During this time the **DSA** proposal is prepared and the **PIP** calls a meeting of the unsecured creditors and may share information with secured creditors, although secured debt cannot form party of a **DSA**.

What happens at the meeting of creditors?

Creditors provide proofs of debts and vote to accept or reject the **DSA** proposal. Creditors participating in the meeting must approve the **DSA** by at least 65% of the value of their debts for the **DSA** to progress. If the **DSA** is approved at the meeting the PIP informs The Insolvency Service which then provides a copy of the **DSA** to the appropriate court.

If approved by the court the **DSA** takes effect once registered by The Insolvency Service in it Register of **DSAs**. There are provisions for creditors to object to the **DSA** within fourteen days of the Meeting of Creditors and the court will deal with any such objection in making its decision.

How will the Debt Settlement Arrangement operate once approved?

The **PIP** supervises the payments by the debtor into the **DSA** and distributes the funds, allowing for deduction of the **PIP's** fees, to creditors who are party to the **DSA** on a pari passu basis, unless otherwise specified. Payments may be regular monthly payments of surplus income or be lump sum payments or be by transfers of assets to creditors or come from the sales of assets or from any combination of these.

The **DSA** lasts for five years or possibly for a further year or for such term not exceeding six years which was agreed at the meeting of creditors. During the term of the **DSA** certain enforcement and other actions by creditors and their agents are stayed. The debtor and the **PIP** must comply with certain ongoing obligations during the term of the **DSA** and at the end of the term the debtor is discharged from the specified debts and the **DSA** is successfully completed. There are provisions for the **DSA** to be terminated before its term is completed if the debtor fails to comply with the terms agreed at the outset and if no solution to that failure can be found and agreed with creditors.